

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3586 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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JAIKAR ALIAS JAISINH SARDARSINH ATALIA

Versus

DISTRICT MEGISTRATE BARODA

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Appearance:

MR. A.S. DAVE FOR MR YS LAKHANI for Petitioner  
MR. NIGAM SHUKLA, Addl. G.P.for the respondents.

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 23/10/96

ORAL JUDGEMENT

Mr. A.S. Dave, learned Advocate for the petitioner. Mr. Nigam Shukla, learned Addl. G.P. for the respondents. This Special Civil Application is directed against the detention order dated 25.4.1996 passed by the District Magistrate, Baroda, whereby the petitioner has been detained under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985.

The detention order was executed on 26.4.1996 and since then the petitioner is under detention lodged at Rajkot Jail, Rajkot.

2. This Special Civil Application was filed on 9.5.1996 and on 10.5.1996 rule returnable for 22.7.1996 was issued with a direction to the respondents to file affidavit-in-reply, if they so desire. However, so far neither any reply has been filed nor any affidavit of the detaining authority has been filed.

3. The grounds enclosed with the detention order show that as many as 11 criminal cases were registered against the petitioner under the Prohibition Act and other offences under the Indian Penal Code. After noticing the allegations in these criminal cases, the detaining authority has referred to the proceedings taken against the petitioner under Section 107 of the Criminal Procedure Code that the petitioner has been threatening and beating innocent people, has been using weapons like sword and knife and has raised a gang of goondas. Reference has also been made to the statements of four witnesses who have deposed against the petitioner's anti-social activities. On that basis the detention order has been passed.

4. Although the detention order has been challenged on more than one grounds, the learned counsel for the petitioner has kept his submissions confined to the ground raised in para 4(i) at pages 9-10 of the petition. It has been submitted by the learned counsel for the petitioner that in connection with Crime Register No. III-976 of 1995 the petitioner has been arrested and this offence has been taken into consideration by the detaining authority. The petitioner has, in fact, been bailed out in this case as well as in other cases taken into consideration by the detaining authority but the detaining authority has not applied its mind as to whether the petitioner was released on bail or was released on personal bond and a mention has been made that while, in fact, the petitioner has been bailed out, copies of the bail application and bail orders have not been given and except F.I.R. letter, no document was given to him. It has been submitted that the detaining authority did not apply its mind as to whether the petitioner was in custody or released after the arrest in connection with the Crime Register No. III-976 of 1995 and the detaining authority is thus not alive about facts which were relevant and is a case of total non-application of mind by the detaining authority and the non-supply of the copies of the bail application and bail orders.

5. I heard Mr. Dave, learned Advocate, for the petitioner and Mr. Nigam Shukla, learned Addl.G.P. for the respondents. Mr. Nigam Shukla, learned Addl. G.P. has not been able to controvert any of the factual allegations as stated above and it is clearly discernible from the pleadings contained in paragraph 4(i) read with the contents of the detention order itself that the detaining authority has not applied its mind while passing the detention order to the important facts which it ought to have taken into consideration. Beside the ground of non-application of mind, it is clearly made out that the copies of the bail application and the bail orders have not been supplied to the petitioner and the respondents have failed to rebut this contention despite ample opportunity. In this view of the matter, it is also clear that the petitioner's right to make an effective representation under Article 22(5) of the Constitution of India has been infringed. Hence the detention order cannot be sustained in the eye of law.

6. Accordingly this Special Civil Application is allowed. The impugned detention order dated 25.4.1996 passed by the District Magistrate, Baroda, is hereby quashed and set aside and the petitioner's detention is declared to be illegal and the respondents are directed to release the petitioner and set him at liberty forthwith, if not required in any other case. Rule is made absolute.

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